REMARKS

This amendment is responsive to the Office Action mailed October 18, 2006, and further to the telephone conference of Jan. 10, 2007, between Applicant's representative and Examiner Paul Kim. Reconsideration is requested in view of the amendments and remarks herein.

> Claims 1-8, 11-30 and 33-46 are pending.
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> Claims 1-8, 11-30 and 33-46 stand rejected.
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> Claims 9, 10, 31 and 32 have been previously cancelled.
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> Claims 1, 20, 24 and 40-43 are independent.
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> Claims 1, 20, 24, 40-43 and 46 are amended.

Claim 1 has been rejected under 35 U.S.C. § 102 based on Cook '082 (U.S. Patent No. 6,820,082). The previous amendment to Claim 1 clarifies that the nondestructive manner preserves the packet structure of the transaction such that the intended recipient receives and processes the transaction as if the interception by the present invention had never occurred. The nondestructive manner refers to preserving an encapsulating packet structure or encoding format such that the intended recipient may continue to receive such a communication according to a predetermined structure (i.e. protocol).

During the Examiner Conference of Jan. 10, 2007, it was proposed that the manner of preserving packet encapsulation as expected by the database application was a distinguishing feature of Applicant's claimed invention over the cited Cook '082 reference. Applicant proposed that the interception of database access transactions preserved the encapsulating application layer protocol structure of the database access transaction such that the resulting transaction was receivable by the intended party (database or invoking application) as if the interception had never occurred, as discussed in Applicant's specification at page 10, lines 17-22 and at page 11, lines 13-17, previously recited in original claims 10 and 33. The Examiner indicated that such an amendment would serve to distinguish over the cited Cook '082 reference.

As discussed during this conference, the claimed interception is performed not as a party to the original communication, but as an observed, or "sniffed" communication by a third, unintended and undetected entity. In contrast, the Cook '082 receiver is the intended party (recipient) to whom the communication is directed, and the party that expects and operates on the packet structure. Therefore, the invention claimed in Claim 1 differs from Cook because Cook consumes the packet structure in processing the transaction, while Claim 1 performs nondestructive actions that leave the packet structure (encapsulation) intended for the intended party to the communication. In other words, claim 1 recites interception by one who is not a party or an endpoint to the communication, but rather an intermediary "sniffer" operating covertly on the intercepted packets.

In the Cook system, a transaction is unwrapped and processed according to the layered protocol expected at a particular point in processing. Thus, Cook '082 processes, or consumes, the layered encapsulation of a received transaction. The user interface receives an HTML request and generates a corresponding XML Query, as discussed at col. 5, lines 2-8 and shown in Fig. 1. Cook '082 processes the XML query via the access manager 82, as disclosed at col. 5, lines 51-57. The Cook approach then employs the data manager to transform the query from XML into an SQL form for database access. Thus, the Cook recipient is an intended party to the communication that expects and operates on a particular layered protocol, therefore consuming the transaction and positioning the results for the next processing step. Claim 1 differs because Claim 1 requires preserving layered protocols in a non intrusive and nondestructive manner. In contrast, the query processing in Cook consumes the incoming transaction to process the query. Further, such transformation from XML to SQL is certainly not undetectable, as the SQL database could certainly not accept and process an XML transaction.

Accordingly, Claim 1 has been herein amended to clarify preservation of application layered protocols by reciting features of original claims 10 and 33,

further clarifying that the claimed interception is performed in a <u>nondestructive</u> <u>manner preserving an expected application layer protocol encapsulation</u>. The resuting data access transaction is receivable as if unmodified and unintercepted because the nondestructive manner of interception <u>preserves an expected</u> <u>application layer protocol encapsulation</u>, as recited in amended Claim 1. Independent claims 24 and 40-43 also recite the distinguishing feature of <u>preserving encapsulation according to expected application based layered</u> <u>protocols</u>, as recited in claim 1, to further clarify and distinguish Applicant's claimed invention.

Claims 1 and 40-43 have also been rejected under 35 U.S.C. § 103(a) based on Cook '082 in view of Bechtolsheim '541 (U.S. Patent No. 7,043,541). The Bechtolsheim approach, however involves a replacement of the Ethernet header in the packet (col. 3, lines 42-46) to rewrite packet control information, and therefore is neither undetectable nor nonintrusive because the modified header has substantive control changes resulting in different treatment by the recipient. Accordingly, one skilled in the art would not look to Bechtolsheim to achieve the presently claimed invention, and even if one did, the result would be inoperable because the control information of the layered protocols (Ethernet, in this case) is rewritten.

Claim 46 has been amended to overcome a rejection under 35 U.S.C. 112. Amended claim 46 now recites that the nondestructive modifications leave the application layer payload receivable as if the payload had been unmodified and preserving <u>encapsulated, non-payload</u> control information of the packet, as also amended in claim 1 from which claim 46 depends.

As the remaining claims depend, either directly or indirectly, from claims 1, 20 and 24, which by the foregoing are submitted as allowable, it is further submitted that all claims are in condition for allowance.

Applicant(s) hereby petition(s) for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,

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